

1 THE HONORABLE ROBERT S. LASNIK
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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

9 KAELI GARNER, *et al.*,

Case No. 2:21-cv-00750-RSL

10 Plaintiffs,

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12 **DECLARATION OF GARNER KROPP IN
13 SUPPORT OF AMAZON'S MOTION TO
14 COMPEL PRODUCTION OF DATA
15 RELIED ON BY PLAINTIFFS' EXPERT
16 SERGE EGELMAN**

17 v.
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AMAZON.COM, INC., a Delaware
Corporation, and AMAZON.COM SERVICES
LLC, a Delaware Limited Liability Company,

NOTE ON MOTION CALENDAR:
September 10, 2024

Defendants.

ORAL ARGUMENT REQUESTED

1 Garner Kropf declares as follows:

2 1. I am an attorney at the law firm of Fenwick & West LLP, counsel of record for
 3 Defendants Amazon.com, Inc. and Amazon.com Services LLC (“Amazon”). I have personal
 4 knowledge of the facts set forth in this declaration. If called upon to do so, I could competently
 5 testify to those facts.

6 2. On July 12, 2024, Amazon issued subpoenas requesting documents from Plaintiffs
 7 three experts. Attached as **Exhibit A** is a true and correct copy of the subpoena requesting
 8 documents from Dr. Serge Egelman. This subpoena requested, among other things, “[a]ll
 9 documents relating to the results [of]” and “[a]ll documents relating to responses to surveys,”
 10 concerning four articles Dr. Egelman authored and relied on in his expert report.

11 3. On July 26, Dr. Egelman served his responses and objections to Amazon’s
 12 subpoena requesting documents. Attached as **Exhibit B** is a true and correct copy of these
 13 responses and objections. Dr. Egelman did not produce any documents responsive to the Survey
 14 Requests and instead stated in response to each request that: “all documents that Dr. Egelman
 15 relied on in the publication[s] … are set forth in the ‘References’ section of the publication[s],
 16 which [are] publicly available.”

17 4. On August 2, 2024, Amazon wrote a letter to Plaintiffs describing the deficiencies
 18 in Dr. Egelman’s responses to the survey requests and requested a conference. Attached as **Exhibit**
 19 **C** is a true and correct copy of this letter. Dr. Egelman did not assert any relevance objections to
 20 the Survey Requests.

21 5. On August 8, 2024, Amazon met and conferred with Plaintiffs via videoconference
 22 regarding the responses and objections to the expert subpoenas, including the Survey Requests.
 23 Armen Nercessian, Alyssa Crooke, and I were present for Amazon, Danielle Izzo and Max Roberts
 24 were present for Plaintiffs and Dr. Egelman. During this conference, Plaintiffs’ counsel stated
 25 that they did not believe the survey data was relevant and was too “far removed” from the report
 26 prepared for Plaintiffs’ motion for class certification. Amazon responded that Dr. Egelman
 27 directly relied on the data underlying these surveys to support his expert opinions, which Plaintiffs
 28 relied on for their motion for class certification. Plaintiffs’ counsel stated that they would respond

1 in writing after further discussion with Dr. Egelman. Pursuant to LRC 37(a)(1), I certify that
 2 Amazon's counsel conferred with Plaintiffs' counsel (representing Dr. Egelman) in a good faith
 3 effort to resolve this dispute without court action.

4 6. Later that day Amazon followed up with an email summarizing the Parties'
 5 positions discussed in conference. Attached as **Exhibit D** is a true and correct copy of this email.

6 7. On August 9, 2024 Plaintiffs responded to Amazon's email, but did not address the
 7 Survey Requests, other than to say they would respond in a letter soon. Attached as **Exhibit E** is
 8 a true and correct copy of this email.

9 8. On August 12, Amazon sent another follow-up email stating, in relevant part, that
 10 Amazon needed to know whether Dr. Egelman was going to produce responsive documents in
 11 time for Amazon to prepare its opposition to Plaintiffs' motion for class certification. Attached as
 12 **Exhibit F** is a true and correct copy of this email.

13 9. On August 13, Plaintiffs sent an email responding to Amazon's August 2nd letter.
 14 In this email, Plaintiffs stated, in relevant part, that "Defendants have not narrowed the scope [of
 15 the Survey Requests] nor provided any legal support for these requests." Plaintiffs refused to
 16 produce these materials and asserted that "[t]he results of any surveys conducted in connection
 17 with Dr. Egelman's articles are explained in the contents of each article." Plaintiffs further
 18 contended that the Survey Requests concern materials "that was not gathered or used for the
 19 purpose of Dr. Egelman's report in this matter." Plaintiffs did not assert that Dr. Egelman did not
 20 have or could not obtain the underlying survey results or data. Attached as **Exhibit G** is a true and
 21 correct copy of this email.

22 10. On August 15, Amazon emailed Plaintiffs to confirm that Dr. Egelman was refusing
 23 to produce any documents responsive to the Survey Requests and let Plaintiffs know that Amazon
 24 would file a motion to compel production of these materials. Attached as **Exhibit H** is a true and
 25 correct copy of this email.

26 11. On August 16, Plaintiffs responded to Amazon's August 15 email but did not offer
 27 to provide any further responsive documents. Attached as **Exhibit I** is a true and correct copy of
 28 this email.

1 I declare under penalty of perjury that the foregoing is true and correct.
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3 Dated this 20th day of August 2024 in San Francisco, California.
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6 */s/ Garner Kropf*
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8 Garner Kropf
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